In the Supreme Court of the United States

OCTOBER TERM, 1972

No.

UNITED STATES OF AMERICA, PETITIONER

v.

HARTFORD ACCIDENT AND INDEMNITY COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The Solicitor General, on behalf of the United States of America, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App. A, *infra*, pp. 11–15) is not yet reported. The opinion of the district court (App. B, *infra*, pp. 16–22) is reported at 320 F. Supp. 648.

JURISDICTION

The judgment of the court of appeals (App. C, *infra*, p. 23) was entered on April 10, 1972. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

470-894—72——1

QUESTION PRESENTED

Whether the United States, when asserting a claim against an insurance company, is bound by the federal limitations period of 28 U.S.C. 2415, or by a shorter limitations period prescribed by state law.

STATUTES INVOLVED

28 U.S.C. 2415 provides in pertinent part:

> (a) Subject to the provisions of section 2416 of this title, and except as otherwise provided by Congress, every action for money damages brought by the United States or an officer or agency thereof which is founded upon any contract express or implied in law or fact, shall be barred unless the complaint is filed within six years after the right of action accrues or within one year after final decisions have been rendered in applicable administrative proceedings required by contract or by law, whichever, is later * * *.
>
> (b) Subject to the provisions of section 2416 of this title, and except as otherwise provided by Congress, every action for money damages brought by the United States or an officer or agency thereof which is founded upon a tort shall be barred unless the complaint is filed within three years after the right of action first accrues * * *.

Cal. Ann. Ins. Code Section 11580.2(i) provides:

> (i) *Limitation of actions.* No cause of action shall accrue to the insured under any policy or endorsement provision issued pursuant to this section unless within one year from the date of the accident:

(1) Suit for bodily injury has been filed against the uninsured motorist in a court of competent jurisdiction, or

(2) Agreement as to the amount due under the policy has been concluded, or

(3) The insured has formally instituted arbitration proceedings, and

STATEMENT

The United States, suing as an insured under a policy of insurance, brought this action against the Hartford Accident and Indemnity Co. ("Hartford") more than one year after the accident, but within the time limit prescribed by Congress in 28 U.S.C. 2415 for the filing of claims by the United States. The district court held that the government's claim was barred for failure to comply with the California one year limitations period and the court of appeals affirmed.

1. As part of an automobile insurance policy purchased from Hartford, Mr. and Mrs. Rogers obtained coverage against damages caused by the negligence of uninsured motorists. On May 14, 1967, Mrs. Rogers was injured in an accident caused by the negligence of an uninsured motorist. Since Mrs. Rogers was the wife of a serviceman, the United States provided her without charge medical care worth about $1968 (R. 10; App. A, *infra*, p. 12).[1]

On July 29, 1969, more than one year after the accident, the government filed suit in the United States District Court for the Eastern District of California against the uninsured motorist (R. 4), and on August

[1] "R." references are to the record in the court of appeals, a copy of which has been filed with the Clerk of this Court.

21, 1969, the United States filed this action in the district court against Hartford seeking recovery as an unnamed insured under the policy between Hartford and Mrs. Rogers.[2]

On cross-motions for summary judgment, the district court held that the United States is an "insured" under the policy, but is barred from recovering against Hartford under the terms of the policy since it had not filed suit against the uninsured motorist within one year of the accident as required by Section 11580.2(i) of the California Annotated Insurance Code (App. B, *infra,* pp. 16–22).

The court of appeals affirmed (App. A, *infra,* pp. 11–15). The court agreed with the government that under 28 U.S.C. 2415 and *United States* v. *Summerlin,* 310 U.S. 414, the United States is not bound by state statutes of limitations (App. A, *infra,* p. 13). The court held, however, that the California statute is not a statute of limitations, but rather is a statute providing a condition precedent to a cause of action. In the court's view, the fact that the United States had not filed its suit within one year meant that it had no cause of action on which it could recover against Hartford (App. B, *infra,* pp. 12–15).

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[2] Hartford earlier settled Mrs. Rogers' claim against it for $9,950, or $50 less than the $10,000 policy limitation of liability. In the district court, the United States claimed that Hartford knew of the claim prior to settling with Mrs. Rogers, and that the government was thus entitled to recover the full $1968, or at least a pro rata share of the $10,000 recoverable under the policy, instead of merely $50 (App. B, *infra,* p. 17).

REASONS FOR GRANTING THE WRIT

The decision below departs from the settled principle that the United States is not bound by state-imposed time limits for asserting its rights—irrespective of whether the state characterizes its enactment as a statute of limitations or something else. The court of appeal's distinction between a statute which precludes the creation of a cause of action unless specified time limits are satisfied, and a statute which extinguishes a cause of action unless those time limits are met, rests on form, not substance. Moreover, the decision below fails to apply the statute of limitations enacted by Congress and applicable to all claims by the United States. If left standing, the decision below is likely to have a serious adverse effect on the litigation and settlement of numerous claims by the government.

1. It is well settled that the United States is not bound by state statutes of limitation. *United States* v. *Summerlin,* 310 U.S. 414; *Board of County Commissioners* v. *United States,* 308 U.S. 343, 351; *United States* v. *Nashville, Chattanooga & St. Louis Railway Co.,* 118 U.S. 120, 125; *United States* v. *Thompson,* 98 U.S. 486, 490.

The court of appeals' sole basis for distinguishing *Summerlin* is that the California statute does not extinguish existing claims unless suit thereon is filed within a certain period—in the usual manner of statutes of limitations—but instead follows the for-

mula that no cause of action for those claims is created unless those time limits are satisfied. A similar attempt to impose state time limits on the United States, however, was rejected in *Summerlin* itself. There the state statute provided that any claim against an estate not filed within 8 months should be "void". 310 U.S. at 415–416. The Florida Supreme Court ruled that the statute was not a statute of limitations, but rather a statute of non-claims for the expeditious administration of estates with which the United States was required to comply. *United States* v. *Summerlin*, 140 Fla. 475, 477–478, 191 So. 842, 843.[3] This Court reversed, holding that, irrespective of how the statute is characterized under state law, the United States is not bound by state statutes imposing time limits. In the words of the Court (310 U.S. at 417):

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[3] Unlike the situation in *Summerlin* and contrary to the view of the court of appeals (App. A, *infra*, pp. 13–14), the California courts recognize that Section 11580.2(i) "is, in effect, a statute of limitations." *Aetna Casualty & Surety Co.* v. *Superior Court*, 233 Cal. App. 2d 333, 340, 43 Cal. Rptr. 476, 480. Accord, *Pacific Indemnity Co.* v. *Superior Court*, 246 Cal. App. 2d 63, 67, 54 Cal. Rptr. 470, 473. Moreover, the California legislature entitled Section 11580.2(i) "*Limitation of actions.*" *Williams* v. *Los Angeles Metropolitan Transit Authority*, 68 Cal. Rptr. 297, 440 P. 2d 497, relied on by the court below (App. A, *infra*, p. 14), is not to the contrary and merely suggests that recovery against the insured is conditioned upon satisfaction of two time requirements: (1) the one-year limitation imposed by Section 11580.2(i) for suing the uninsured motorist, and (2) a separate limitations period applicable to a subsequent suit by the insured against the insurer. *Williams* does not hold that Section 11580.2(i) is not a statute of limitations.

> * * * [I]f the statute * * * undertakes to invalidate the claim of the United States, so that it cannot be enforced at all, because not filed within eight months, we think the statute in that sense transgressed the limits of state power. [Citation omitted.]

There is no substantive difference between a statute which extinguishes a claim unless certain conditions are met within one year and another which prevents a claim from ever being created unless those same conditions are met within that period. In either case, the state will permit recovery if, and only if, the specified conditions are met within one year. The difference is the essentially formal one between a condition subsequent and a condition precedent. In either event recovery under the statute is contingent on the filing of a claim by the prescribed date. Cf. *Helvering* v. *Hallock*, 309 U.S. 106, 116–118. Under *Summerlin*, such time limits may not be applied to the United States.

2. In 1966, acting primarily to eliminate the possible unfairness resulting from the fact that the United States was not bound by laches or statutory time limits in asserting its claims, Congress enacted 28 U.S.C. 2415(a) and (b), which provide in pertinent part that "*every action* for money damages brought by the United States" (emphasis supplied) shall be barred unless in contract actions suit is filed within 6 years and in tort actions within 3 years. In light of the well-settled rule that the United States is not bound by state time limits, the statute undoubtedly reflects

the intent of Congress to provide a single, federal limitations period for all claims by the United States.[4] The ruling below is inconsistent with the intent of Congress in enacting 28 U.S.C. 2415.[5]

3. The issue in this case is important and recurring. Each year the United States asserts thousands of claims seeking reimbursement for medical expenses in reliance upon the time limits prescribed by 28 U.S.C. 2415. If the decision below stands, the United States will be subject to the shorter time limits imposed by Section 11580.2(i) in California and under other analogous state statutes. Moreover, the rationale of the decision applies not only to claims involving medical expenses, but to any other claims by the fed-

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[4] The House and Senate committees which reported this legislation stated:

> It is * * * clear that the enactment of this bill will not subject an agency of the United States * * * to any State Statute of limitations.

H. Rep. No. 1534, 89th Cong., 2d Sess., p. 8; S. Rep. No. 1328, 89th Cong., 2d Sess., p. 7.

[5] The court of appeals did not rest its holding on the ground that the United States was asserting a right based upon state instead of federal law. In any event, the United States is not bound by state time limits, irrespective of whether the right asserted is state or federal. *Phillips* v. *Commissioner of Internal Revenue*, 283 U.S. 589, 602–603; *Davis* v. *Corona Coal Co.*, 265 U.S. 219, 222–223; *Stanley* v. *Schwalby*, 147 U.S. 508, 513–516. Indeed, in *Summerlin*, *supra*, the United States was asserting a right in state court which, prior to its acquisition by the government, was exclusively a right under state law. Moreover, 28 U.S.C. 2415 applies in terms to "every action" brought by the United States, without distinguishing between state and federally created rights. Congress has the power to define the time limits within which the United States may assert state created rights. *United States* v. *John Hancock Mutual Life Insurance Co.*, 364 U.S. 301, 305 n. 5.

eral government grounded on state law. Whenever a state statute of limitations is construed as preventing a cause of action from coming into being, instead of cutting one off, the United States will be bound. Such a result would have a seriously damaging effect on the policy of uniformity embodied in 28 U.S.C. 2415 and a correlative impact on the litigation and settlement of government claims.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be granted.

Respectfully submitted.

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JULY 1972.

470-594—73——2

APPENDIX A

United States Court of Appeals for the Ninth Circuit

No. 71-1234

UNITED STATES OF AMERICA, APPELLANT

v.

HARTFORD ACCIDENT AND INDEMNITY COMPANY, A CORPORATION, APPELLEE

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

Before: MERRILL and KILKENNY, Circuit Judges; and LYDICK,* District Judge.

LYDICK, District Judge:

This is an appeal by the United States of America from a District Court order denying it recovery under the California Uninsured Motorist Law and the terms of a policy of insurance issued by Hartford Accident and Indemnity Company to Willard J. Rogers and his wife. The United States seeks recovery of medical benefits paid by the United States to Mrs. Rogers as a serviceman's wife under the Federal Medical Care Recovery Act, 42 U.S.C. §§ 2651 et seq.

The facts, briefly stated, are: Hartford issued to Mr. and Mrs. Rogers, residents of California, an automobile liability insurance policy which included, as required by California law,[1] a provision insuring

*The Honorable Lawrence T. Lydick, United States District Judge, Central District of California, sitting by designation.

[1] Cal. Ann. Ins. Code (1971 Pocket Part), Section 11580.2.

against injury and damage sustained as the result of negligent acts of uninsured motorists. On May 14, 1967, while so insured, Mrs. Rogers, riding in a car driven by her husband, was injured in an automobile accident caused by the negligence of an uninsured motorist. On January 24, 1968, Hartford made a settlement with Mrs. Rogers, paying her $9,950.00 of its total policy exposure of $10,000. Mrs. Rogers was entitled to and received medical care and treatment from the United States valued at $1,968.26. On April 16, 1968, the United States gave Hartford notice of its claim. Hartford denied liability and on August 21, 1969 the United States filed its action in the Court below to recover its payments to Mrs. Rogers from Hartford.

Under present California law uninsured motorists coverage is required in all automobile insurance policies unless waived in writing by the insured. The policy here involved provided that, in case of injury and damage, an insured would be paid the amount he would be legally entitled to recover from the uninsured motorist.

That same law provides that no cause of action shall accrue to the insured under any policy or endorsement provision issued pursuant thereto unless within one year from the date of the accident suit has been filed in a court of competent jurisdiction.

Hartford based its denial of liability to the United States on two grounds: First, that the United States was not an insured within the meaning of the policy or the California Insurance Code; and, second, that no cause of action had accrued to the United States because it had not filed its suit within one year from the date of the accident.

On cross-motions for summary judgment, the District Court held that (1) the United States was an in-

sured under the policy, but (2) was barred from recovery because of its failure to comply with the provision of the California Insurance Code requiring it to bring suit within one year.

The issue on appeal to this Court is whether or not the Court below erred in its holding that the United States was barred from recovery because of its failure to comply with the California Insurance Code regarding the filing of suit.

The United States contends that the California Insurance Code section involved is a statute of limitations and that, because of 28 U.S.C. § 2415 and *U.S.* v. *Summerlin*, 310 U.S. 414 (1940), it is thoroughly settled that the United States is not subject to state statutes of limitations.

The defect in that contention is not in the authority cited but in the designation of California Insurance Code Section 11580.2 as a statute of limitations.

Prior to the enactment of that section, neither insureds such as the Rogers nor one claiming through them such as appellant had any rights against a liability insurer for injury or damage caused by uninsured motorists unless such rights were specifically contained in the contract of insurance. Few contracts of liability insurance provided such coverage, and it was for this reason that California, by the enactment of California Insurance Code Section 11580.2 established its policy to protect its citizens against irresponsible motorists.

Section 11580.2 provides, among other things, that no cause of action shall accrue to the insured unless he complies with the statute. California courts construing the statute make it clear that the langage in issue creates an absolute prerequisite to the accrual of any cause of action under the Uninsured Motorist law and does not create a convention statute of limita-

tions. Thus, in *Williams* v. *Los Angeles Metropolitan Transit Authority*, 68 C.2d 599 at 605, (1968) the California Supreme Court held that:

> "Insurance Code Section 11580.2, Subdivision (h), however, creates a condition for the preservation of a potential cause of action under an insurance policy and does not fix the time for instituting a civil suit against the insurer after a cause of action has accrued."[2]

See also *Pacific Indemnity Co.* v. *Ornellas*, 269 C.A.2d 875 (1969); *Pacific Indemnity Co.* v. *Superior Court*, 246 C.A.2d 63 (1966); and *Fireman's Insurance Co.* v. *Diskin*, 255 C.A.2d 502 (1967).

While *Summerlin* is clear authority for the proposition that an action vested in the United States cannot be defeated by a state statute of limitations, neither it nor its progeny hold that considerations of federal supremacy can create a cause of action where none exists under state law or otherwise. As the Supreme Court said in that case, at page 417:

> "When the United States becomes entitled to a claim, acting in its governmental capacity, and asserts its claim in that right, it cannot be deemed to have abdicated its government authority so as to become subject to a state statute putting a time limit on enforcement."

Inherent in the language of the Supreme Court is the requirement that the government must have become entitled to a claim and have acquired a cause of action before it comes under the umbrella of 28 U.S.C. 2415.

Under the clear language of the California statute and California cases construing it an insured under

[2] At the time the action was commenced, this subdivision was numbered 11580.2(h). It has since been re-designated 11580.2(i).

the uninsured motorist coverage here involved has acquired no right to sue the insurance carrier until compliance with Section 11580.2 has been accomplished. *Summerlin* cannot be stretched to create a right in the government to sue under state law without complying with the condition precedent to the accrual of the action.

The decision of the Court below is affirmed.

APPENDIX B

In the United States District Court for the Eastern District of California

Civ. S–1329

UNITED STATES OF AMERICA, PLAINTIFF

v.

HARTFORD ACCIDENT & INDEMNITY COMPANY, A CORPORATION, DEFENDANT

MEMORANDUM AND ORDER

This case, arising on cross motions for summary judgment, contains a set of stipulated facts and issues. On May 14, 1967, a woman named Fusae Rogers was injured in an automobile accident with an uninsured motorist. She received treatment at Oak Knoll Naval Hospital, and later settled with her own insurance carrier, Hartford, under uninsured motorist coverage.[1] In April, 1968, the United States submitted a claim to Hartford under the Federal Medical Care Recovery Act, 42 U.S.C. §§ 2651–53, for the amounts expended in the treatment of Fusae Rogers. Although in terms the Federal Act allows recovery only from the tortfeasor, the United States claimed to be an insured under Fusae Roger's uninsured motorist clause. Hartford rejected the claim, and this lawsuit followed.

[1] Her policy limits were $10,000, and the parties have stipulated that her award of $9,950.00 represents compensation for general damages over and above the reasonable value of the medical care she received.

Although the parties have stipulated to four issues, I consider it necessary to discuss only two.[2] First, whether the United States is an insured, within the meaning of California Insurance Code § 11580.2,[3] under the uninsured motorist coverage extended by Hartford to Fusae Rogers. Second, if so, whether the Government's claim is barred by § 11580.2(i)[4] for failing to take the action required therein within one year of the accident. I conclude that the United States is an "insured", but is barred by the California statute from bringing suit on the policy.

THE UNITED STATES IS AN INSURED UNDER THE POLICY

California defines the word "insured" for purposes of uninsured motorist coverage as follows:

> * * * as used in (a) above the term "insured" means the named insured and the spouse of the named insured and relatives of either while residents of the same household while occupants of a motor vehicle or otherwise, heirs and any other person while in or upon or entering into or alighting from an insured motor vehicle and any person with respect to damages he is entitled to recover for care or loss of services because of bodily injury to which the policy provisions or endorsement apply; * * *.

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[2] The remaining two issues, which I do not reach under my disposition of the case, are (1) whether the United States is limited to $50.00 because of the previous $9,950 settlement with Fusae Rogers, and (2) if it is not so limited, whether it may recover in full for its expenses or only on a prorata basis.

[3] Portions of the statute are hereinafter set forth verbatim at appropriate places in the opinion.

[4] At the time this action was commenced, this section was numbered § 11580.2(h). It has since been renumbered, and will be referred to here by its new designation.

The United States claims to be a "person with respect to damages he is entitled to recover for care or loss of services because of bodily injuries to which the policy provisions or endorsement apply." I agree.

While the Ninth Circuit has not yet decided that the United States is an insured under the California uninsured motorist law, a number of other federal courts interpreting similar provisions in other states have ruled in favor of the Government on this issue. *Government Employees Insurance Co.* v. *United States,* 349 F. 2d 83 (10th Cir. 1965); *Government Employees Insurance Co.* v. *United States,* 376 F. 2d 836 (4th Cir. 1967) [hereinafter cited as *Geico*]; *United States* v. *Commercial Union Insurance Group,* 294 F. Supp. 768 (S.D. N.Y. 1969). *Cf. United States* v. *Allstate Insurance Co.,* 306 F. Supp. 1215 (N.D. Fla. 1969).

In *Geico,* the provision at issue was nearly identical with the definition of "insured" under California law, and the court held as a matter of interpretation that the United States was a "person" within the scope of coverage. Hartford urges, however, that I reject the *Geico* rule because it would somehow undermine California's policy of distributing awards under uninsured motorist coverage. It does not specify how California's policy differs from that involved in *Geico,* and cases cited to support its position are uninformative. Hartford's failure to particularize a significant difference leads to the conclusion that the policy underlying California Insurance Code § 11580.2 is no different than that of other states—to provide protection against irresponsible motorists. The argument that in some cases an injured motorist may have to share his award with the Government as a co-insured is no more per-

suasive with me than it was with the courts which implicitly rejected it in the decisions cited, *supra*.[5]

In the absence of guidance from the Ninth Circuit, therefore, I find the United States to be an "insured" within the meaning of § 11580.2.

THE UNITED STATES IS BARRED FOR FAILURE TO COMPLY WITH CALIFORNIA INSURANCE CODE § 11580.2(i)

Having found the United States to be an insured, I now consider whether it was required to comply with the one-year provisions of § 11580.2(i):

> (i) *Limitation of actions*
>
> (i) No cause of action shall accrue to the insured under any policy or endorsement provision issued pursuant to this section unless within one year from the date of the accident:
>
> (1) Suit for bodily injury has been filed against the uninsured motorist, in a court of competent jurisdiction, or
>
> (2) Agreement as to the amount due under the policy has been concluded, or
>
> (3) The insured has formally instituted arbitration proceedings.

While the Government admits its failure to comply with this provision, it claims an excuse on the ground that the United States is immune to state statutes of limitation or non-claim, citing *United States* v. *Summerlin*, 310 U.S. 414, 84 L. ed 1283 (1940) as "direct authority." In *Summerlin*, the United States acquired a claim against the estate of a deceased but failed to

[5] In addition, it should be remembered that the United States may forego collection if it would result in undue hardship to the injured. 42 U.S.C. § 2652(b).

file proof of it within eight months, contrary to a state statute which provided that the claim "shall be void" if not presented on time. The Court held that the United States was not bound by the eight-month filing requirement, whether it be regarded as a statute of limitations or a stattue of non-claim:

> But if the statute, as sustained by the state court, undertakes to invalidate the claim of the United States, so that it cannot be enforced at all, because not filed within eight months, we think the statute in that sense transgressed the limit of state power.

Of decisive importance in *Summerlin* is the fact that the claim had accrued to the United States before the state statute purported to cut it off. For the proposition that an action vested in the United States cannot be defeated by a state's statute of limitations, therefore, *Summerlin* is clear authority. Neither it nor its progeny, however, stands for the proposition that considerations of federal supremacy can *create* a cause of action in the government when none exists under state law.[6] A closer examination of § 11580.2(i)

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[6] The precise holding of *Summerlin* is difficult to define. Since a claim against one's estate ordinarily originates in a pre-existing common-law debt, it is possible that *Summerlin* merely holds that a state statute cannot cut off a common law action vested in the United States. Accordingly, some cases consider *Summerlin* to be inapplicable when the government sues on a state-created cause of action unknown at common law. United States v. Magnolia Motor & Logging Co., 208 F. Supp. 63 (N.D. Cal. 1962); United States v. Eytcheson, 237 F. Supp. 371 (Mont. 1965); Flintkote Co. v. United States, 47 F.R.D. 322 (S.D. N.Y. 1969). *See also* cases cited in 61 A.L.R. 412. For purposes of this case, however, it is not necessary to decide whether this distinction is valid.

will reveal that this extraordinary result is exactly that urged by the Government here.

Section 11580.2(i) provides that "No cause of action shall accrue to the insured" unless he complies with the one-year provision. California courts construing the statute make clear that the quoted language does not create a conventional statute of limitations, but is an absolute pre-requisite to the accrual of *any* cause of action under the uninsured motorist clause. In *Williams* v. *Los Angeles Metropolitan Transit Authority,* 68 C. 2d 599, 68 Cal. Rptr. 297 (1968), the California Supreme Court said that:

> Insurance Code section 11580.2, subdivision (h), however, creates a condition for the preservation of a potential cause of action under an insurance policy and does not fix the time for instituting a civil suit against the insurer after a cause of action has accrued.

Relying on this decision, the California Court of Appeal (1st Dist., Div. 4) in *Pacific Indemnity Co.* v. *Ornellas,* 269 C.A. 2d 875, 75 Cal. Rptr. 608, refused to apply the state's tolling statutes to Insurance Code § 11580.2(i) on the ground that those provisions can "extend the life of a cause of action *already accrued,* but are not to be used to lengthen the time during which an injured party may meet the conditions precedent to the accrual of his cause of action under the uninsured motorist statute in the first instance." *See also Pacific Indemnity Co. v. Superior Court,* 246 C.A. 2d 63, 54 Cal. Rptr. 470 (1966) and *Firemen's Insurance Co. v. Diskin,* 255 C.A. 2d 502, 63 Cal. Rptr. 177 (1967).

Under the clear language of the statute and cases construing it, an insured under uninsured motorist

coverage unquestionably has no right to sue the insurance carrier until complying with § 11580.2(i).[7] *Summerlin* cannot be stretched to create a right in the government to sue under state law without complying with the conditions precedent to the accrual of the action. Cases holding that the government is immune from state statutes of limitations when suing the third party tortfeasor to recover the cost of its medical expense do not save the United States. *See United States* v. *Fort Benning Rifle and Pistol Club,* 387 F.2d 884 (1967); *United States* v. *York,* 398 F.2d 582 (6th Cir. 1968); *United States* v. *Gera,* 409 F.2d 117 (1969). *See also United States* v. *Housing Authority of City of Bremerton,* 415 F.2d 239 (9th Cir. 1969). These cases merely hold that the Federal Medical Care Recovery Act vests an independent right in the United States to recover from the tortfeasor which cannot be cut off by state statutes of limitations. They are, therefore, entirely consistent with *Summerlin* and of no support here.

In the absence of conflicting Congressional legislation I refuse to find that the United States has a cause of action based on § 11580.2 without complying with it.

IT IS THEREFORE ORDERED that defendant Hartford's motion for summary judgment be, and the same is, hereby granted.

Dated: November 13, 1970.

THOMAS J. MACBRIDE,
United States District Judge.

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[7] To the extent that Haury v. Allstate Insurance Co., 384 F.2d 32 (10th Cir. 1967) can be read otherwise, I decline to follow it. The California cases cited above and decided subsequent to *Haury* amply support my decision.

APPENDIX C

JUDGMENT

United States Court of Appeals for the Ninth Circuit

(No. 71-1234)

UNITED STATES OF AMERICA, APPELLANT

v.

HARTFORD ACCIDENT AND INDEMNITY COMPANY, A CORPORATION, APPELLEE

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of California and was duly submitted. On consideration whereof, it is now hereby ordered and adjudged by the Court, that the judgment of the said District Court in this cause be, and hereby is affirmed.

Filed and entered April 10, 1972.

U.S. GOVERNMENT PRINTING OFFICE: 1972